



Ad Standards Community Panel
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Case Report

1. Case Number :	0146-22
2. Advertiser :	Global Ballooning Australia
3. Product :	Tourist Attractions
4. Type of Advertisement/Media :	Internet - Social - Instagram
5. Date of Determination	13-Jul-2022
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising

DESCRIPTION OF ADVERTISEMENT

This Instagram advertisement was posted on the @emmylou_loves account on 28 June and features a woman and three children in front of a yellow hot air balloon. The caption reads, "My goodness, what a beautiful experience. @globalballooningaustralia #emmylouloves"

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

This is an undeclared advertisement for Global Ballooning Australia. The post today is part of an advertorial collaboration EmmyLou has with the company. She received two free tickets worth about \$800 in total in exchange for advertising this company via her instagram stories, a pinned story, a reel and now a follow up grid photo at the start of school holidays.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Emmylou did pay for half of the experience so it wasn't a paid partnership experience, which she did mention when she posted & there was no clear expectations of what she



should post/say as this was left to her own experience. We never paid her to come on a balloon flight. It was only a gift of 2 tickets.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the Instagram post did not disclose that it was sponsored.

The Panel viewed the advertisement and noted the advertiser's response.

Section 2.7: Advertising or Marketing Communication shall be clearly distinguishable as such.

Is the material advertising?

The Panel noted that it must consider two matters:

- Does the material constitute an 'advertising or marketing communication', and if so
- Is the advertising material clearly distinguishable as such?

Does the material constitute an 'advertising or marketing communication'?

The Panel noted the definition of advertising in the Code. Advertising means: "any advertising, marketing communication or material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct".

The Panel considered that the photo in front of the balloon and the tagging of the brand did amount to material which would draw the attention of the public in a manner designed to promote the brand.

With regards to whether the advertiser or marketer has a reasonable degree of control, the Panel noted that the advertiser had advised they had provided Ms Maccarthy with two free tickets, with no instructions on needing to post about her experience.

The Panel noted that in the case of gifts to influencers the context in which the product is given cannot be ignored. The Panel noted that influencers operate as an advertising medium utilised by businesses to promote their brands and products. The Panel noted that many influencers have agents and that businesses exist which put brands and influencers in touch with each other. The Panel noted that influencers are



sometimes paid, and sometimes provided with free product. The Panel noted that influencers' posts may also be created in circumstances in which there is no relationship context. The Panel considered that the Code's requirements should be interpreted with its purpose in mind, that is to ensure that consumers are informed, and that influencers should be transparent about their relationships with brands.

The Panel noted that the advertiser chose to provide Ms. Maccarthy with two free tickets, knowing that she has a large social media presence and is likely to post about the experience. The Panel considered that while there was no direct request or stipulation for Ms. Maccarthy to post about the gift, it is reasonable to assume that the motivation for an advertiser to provide anything for free to an influencer is that they will post about it or otherwise draw the attention of their followers to the brand as Ms. Maccarthy did in this case.

For these reasons, the Panel considered that the Instagram post did meet the definition of advertising in the Code.

Is the material clearly distinguishable as such?

The Panel noted the Practice Note for the Code states:

"Influencer and affiliate marketing often appears alongside organic/genuine user generated content and is often less obvious to the audience. Where an influencer or affiliate accepts payment of money or free products or services from a brand in exchange for them to promote that brand's products or services, the relationship must be clear, obvious and upfront to the audience and expressed in a way that is easily understood (e.g. #ad, Advert, Advertising, Branded Content, Paid Partnership, Paid Promotion). Less clear labels such as #sp, Spon, gifted, Affiliate, Collab, thanks to... or merely mentioning the brand name may not be sufficient to clearly distinguish the post as advertising."

The Panel noted that Ms Maccarthy had posted a story detailing that she had been provided with free tickets a week prior to this advertisement being posted, as detailed in case 0145-22, and that this story had been highlighted on her page. The Panel considered that although the influencer had made a disclosure on her story, this would not necessarily be seen by people viewing this post, and that the post should be considered in isolation.

The Panel considered that there was nothing in the current post to indicate that the influencer had been given two tickets. As such, the Panel considered that the advertisement was not clearly distinguishable to the audience.

2.7 conclusion

In the Panel's view the advertisement was not clearly distinguishable as such and did breach Section 2.7 of the Code.



Conclusion

Finding that the advertisement breached Section 2.7 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

I've added paid partnership & so has Emmylou.